

REMARKS

Claims 114-162 are now pending in the application. The Office has entered a restriction requirement, stating that the present application includes three patentably distinct species of the claimed invention: Group I, comprising figures 1-15; Group II comprising figures 16-20; and Group III comprising figures 21-24.

Applicant provisionally elects to prosecute the claims of Group I, as represented by Figures 1 through 15, with traverse. Applicant notes that Claims 114 through 121 are readable on the species of Group I. Applicant also notes that Claims 114 through 121 appear to be readable on the species of Group II as well.

Applicant submits that the Office has not set forth a proper requirement for restriction. Applicant notes that Section 803 of the Manual of Patent Examining Procedure provides that “[there] are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent or distinct as claimed; and (B) There would be a serious burden on the examiner if restriction is not required. Moreover, Section 803 of the Manual of Patent Examining Procedure states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (emphasis added)
(emphasis added).

Applicant further notes that the prior Examiner assigned to the present application did not enter a restriction requirement or an election of species at any point during the rather lengthy prosecution of the present application, despite the fact that the application included claims to each of the three presently identified groups of inventions. Accordingly, Applicant submits that the issue of “serious burden” had been inherently


decided by the prior Examiner in the negative. In this regard, Applicant submits that as the prior Examiner did not enter a restriction requirement or election requirement, she must have believed that that presentation of claims to the three presently identified groups of inventions was not a serious burden.

Applicant submits that as the Office must give full faith and credit to the actions of the prior Examiner (see, e.g., MPEP §704) that the Office cannot now contend that presentation of claims to the three presently identified groups of inventions is a serious burden. As such, Applicant respectfully submits that the Office has not presented a proper restriction requirement and respectfully requests the Examiner to reconsider and withdraw the restriction requirement.

It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: 
Michael D. Zalobsky
Reg. No. 45,512

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

MDZ/cr